

1 evidence or exhibits contains the elements of a brief,"  
2 the "elements of a brief," that's what I'm focusing on,  
3 "that part shall not be accepted."

4 Let's look at what "brief" is. I mean, how  
5 could it not? "Brief" means a written document that  
6 includes a discussion of the citations, laws, or  
7 regulation or arguments as to how laws and regulation  
8 apply or don't apply.

9 MR. LANGSTON: Bruce Langston, Franchise Tax  
10 Board.

11 This happens a lot where, you know, you have a  
12 briefing schedule where you can put your facts, your  
13 arguments, your application of arguments, and the facts.  
14 Exhibits are supposed to be things like copies of  
15 checks, documents, things like that. They're not  
16 supposed to be argument. They're not -- they arguably  
17 could be affidavits or something, so maybe they're  
18 facts, but they're -- but, I mean, this has been the  
19 rule for years, that you can't bring a brief to the  
20 hearing. There's a time for filing a brief.

21 MR. MICHAELS: What can you bring?

22 MR. LANGSTON: You can bring -- people bring  
23 all sorts of stuff.

24 MR. MICHAELS: What can you bring that's not  
25 covered by this (g) definition on page 4? What can you

1 bring?

2 MR. LANGSTON: (g)? Where is (g)?

3 MR. VINATIERI: The page 4 in the back.

4 MR. HELLER: 5002(b), Subdivision (e).

5 MS. PELLEGRINI: Pages and pages and pages of  
6 stuff.

7 MR. MICHAELS: I guess from the FTB  
8 perspective, what does this leave open? What's not  
9 covered by this, if you could.

10 MR. LANGSTON: Well, what we just said.

11 MS. RUWART: That part that is the argument or  
12 discussions. It's contemplated that a brief will  
13 obviously perhaps contain exhibits or evidence of a type  
14 that could be brought to the hearing under these rules.  
15 But the part of the brief that includes the discussion  
16 or citations to the laws and regulations, too late.

17 MR. MICHAELS: I understand.

18 MS. RUWART: Okay.

19 MR. MICHAELS: So what's left?

20 MS. MANDEL: Well, Peter, this happens a bunch  
21 in business tax cases. They'll come in and have a stack  
22 of invoices and, you know, whatever else they have. And  
23 on top of that, someone has written a nice explanation  
24 of that that goes beyond just here are my invoices that  
25 show they were interstate commerce sales. They'll

1 actually cite a case or cite -- they'll write it in a  
2 way that's more like a brief, because it cites cases and  
3 it cites statutes and it's not just an index to here's  
4 the thing.

5 And what appeals does is they rip off those  
6 two, three, or four pages, and then the evidentiary part  
7 of that comes to the Board, but unless the Board decides  
8 to accept that as sort of a post-hearing brief, those  
9 three or four pages come off the top.

10 MR. SHAH: Maybe you can define "exhibit."

11 MR. HELLER: We're definitely going to make a  
12 note on, make sure we clarify, get clarification.

13 MR. DAKESSIAN: So under this rule, if I bring  
14 a blow-up, which I have done in the past, that sets  
15 forth the law or regulation, that is going to be  
16 disallowed? That is going to be considered a brief  
17 under these rules?

18 MR. LANGSTON: These are the same rules that  
19 exist now. If it hasn't been -- I mean, because that's  
20 not an argument; that is just a copy of the statute.  
21 You can bring a copy of the statute.

22 MR. DAKESSIAN: A written document that  
23 includes a citation to law or a regulation.

24 MS. RUWART: Is it fair to say if it's a  
25 presentation aid and not something new --

1           MR. DAKESSIAN: I think the key is, and I think  
2 what would satisfy everybody is -- nobody wants to be  
3 ambushed at a hearing. I think that's what this is all  
4 about.

5           So if I bring a big blow-up that contains a  
6 citation to a regulation or an argument that I made  
7 before the brief, you know, from either side, I don't  
8 think there should be an objection to that.

9           MR. LANGSTON: I would agree with that too. I  
10 have no -- I have no problem with that.

11          MS. RUWART: I mean, that's a -- I'll just call  
12 it a presentation aid.

13          MR. VINATIERI: That's all it is.

14          MS. RUWART: You're presenting something you  
15 have already presented before.

16          We are talking about, and maybe this is  
17 something we need to be more clear about, it's something  
18 new and something particular. We know it when we see  
19 it, but we haven't done a good job of expressing it.

20          MR. HELLER: I do think there's a way to define  
21 "brief" a little more specifically so that it's clear  
22 that that definition doesn't necessarily encompass every  
23 document that can be attached to or every citation that  
24 might be included so that we can make clear parameters  
25 for exhibits.

1 MS. CROCETTE: Let's move on, please.

2 MS. RUWART: Yes, sorry.

3 Anything else about evidence or exhibits?

4 Section 4, Witnesses?

5 Section 5, Taxpayer Rights Advocates.

6 MR. MICHAELS: May I make one observation?

7 "Witnesses" appear earlier in this to contemplate Board  
8 staff as witnesses; is that right?

9 MR. HELLER: Board staff, well, Board staff can  
10 be a witness. That is possible.

11 MR. MICHAELS: Well, I mean, I think it says,  
12 it says right here on page 16, 5015, "Witnesses," "The  
13 taxpayer and the department may offer witnesses to  
14 testify."

15 MR. HELLER: Right.

16 MR. MICHAELS: It's not uncommon for an  
17 appraiser to testify. So would all of this apply  
18 likewise to staff witnesses?

19 MR. HELLER: Uh-huh.

20 MS. PELLEGRINI: Okay. I see what you're  
21 saying.

22 MR. HELLER: I don't think as it's written  
23 right now it's really referring to taxpayer or its  
24 representative, but I don't think staff would have an  
25 objection to, and I don't think it's intended to make

1 staff exempt from the same requirement.

2 MR. MICHAELS: Because the Part 3, if I recall  
3 correctly, had language in there that if the Board  
4 wanted a witness to take an oath, the Board can do that,  
5 but in that circumstance, both the State witness and the  
6 taxpayer's witness would be required to take an oath.  
7 Okay. So just -- I'm just thinking.

8 MR. HELLER: You want to take out "taxpayer"  
9 and maybe put in "party" or "parties need to notify,"  
10 something to that effect, so it would apply equally to  
11 FTB representatives.

12 MR. MICHAELS: Or cross refer to 5015(a) or  
13 something.

14 MR. HELLER: Perfect. I think that's great. I  
15 think it will help the Board members and Board staff  
16 more. We need to let them know about our witnesses as  
17 well as the taxpayer's representatives.

18 MS. RUWART: Subsection (5), taxpayer rights  
19 advocate. Okay.

20 MR. KAMP: The Board should be capitalized in  
21 Board of Equalization.

22 MS. RUWART: Subsection (6), after sign-in is  
23 completed, that seems to be present practice.

24 Okay. Article 5, the Board meeting, we have,  
25 like, eight pages to go. All right. Conduct of the

1 Board meeting. Mr. Michaels, I'm sure you have a  
2 comment here. Let's make it.

3 MR. MICHAELS: No, I'll move on. I've made my  
4 comments.

5 MS. RUWART: Okay. Thanks. 5021.

6 MS. MANDEL: I've one on 5021(a)(2), I don't  
7 know what "matters" is, because I don't think that the  
8 deputy controller is precluded from voting on  
9 regulations under all of these laws. I think it's  
10 something that -- "matters" is not the right word.

11 MR. MICHAELS: What about the word "appeal"?

12 MS. MANDEL: Yeah.

13 MS. RUWART: Okay. We'll get to that.

14 Anything on (a) or (b)? 5022, Order of Business and  
15 Time Allocation for Oral Hearings. Let's do . . .

16 MS. MANDEL: Not everything is quasi-judicial.

17 MS. RUWART: Okay. Quasi-judicial. Thank you.  
18 (a)(1), (a)(2), (a)(3)?

19 MR. MICHAELS: Board attorney, what's that?

20 MS. RUWART: It's been Appeals Division, but it  
21 could be anybody.

22 MR. VINATIERI: You've got your quasi-judicial  
23 language again.

24 MS. RUWART: Okay. Four, five or six.

25 MR. DAVIS: Four and five are -- that's where

1 you have the visual aid -- ability to use visual aids.  
2 That's just going back to our prior discussion.

3 MS. RUWART: Okay. Great. Four, five, six.  
4 How about (b)?

5 MR. MICHAELS: What number?

6 MS. RUWART: We're on 5021(b).

7 MR. VINATIERI: 5022.

8 MS. RUWART: 5022(b).

9 MR. MICHAELS: Okay. Actually, with (a), could  
10 I go back to (a) (3) (E)?

11 MS. RUWART: Okay. Yes, please.

12 MR. MICHAELS: Any other -- let's see. "Board  
13 attorney shall introduce the" -- fill in the blank --  
14 "matter for oral hearing by stating on the record any  
15 other information that may be of particular use or  
16 interest to the Members."

17 I was thinking more along the lines of  
18 proprietary and confidential information, of course,  
19 than the weather, but . . .

20 MS. RUWART: Okay. Do you have a problem with  
21 the language?

22 MR. MICHAELS: Well, it's a bit loose, I would  
23 say. Bob Lambert's over there, and the mic's his, and,  
24 you know, that might be of particular use or interest to  
25 the Board members.



1 MR. HELLER: You never know.

2 MR. MICHAELS: Nothing against Bob.

3 MS. RUWART: Okay. We look forward to your  
4 suggestions.

5 MR. DAVIS: Ken Davis. Going back to (4) just  
6 very quickly, we want to strike -- or suggest striking  
7 "taxpayer shall state their position and present  
8 evidence as they see fit." It wasn't in the prior  
9 language, and we're suggesting it be omitted. And it  
10 should be relevant evidence or some discretion with the  
11 Board as to how it's presented.

12 MS. MANDEL: It was as they see fit.

13 MR. DAVIS: Right. We're suggesting it be  
14 stricken.

15 MS. ARMENTA-ROBERTS: The memo from the tax  
16 section, state and local tax committee of the California  
17 State Bar, where would their suggestion go on this page  
18 two where they're talking about the time allocation for  
19 hearings, they say proposed reg 5022.

20 MR. LANGSTON: We're past that.

21 MS. RUWART: Yes. That's (a)(2).

22 MS. ARMENTA-ROBERTS: I was going to make a  
23 suggestion. Is that something to be considered or . . .

24 MS. RUWART: It's all going to be considered.

25 MR. HELLER: The main issues there are just,

1 you know, how long the Board hearings take on a regular  
2 basis and how long do people really need to do your  
3 presentations. And so we just don't want to have -- you  
4 know, we just have to figure out what's a viable  
5 parameter.

6 MS. MANDEL: And the only other -- on the time  
7 limits, I know that -- I don't remember if it's the time  
8 limits are in the current regulation; right? No,  
9 they're not in the current regulation. Then they're in  
10 a letter that comes from Board Proceedings where it  
11 was -- right?

12 MS. PELLEGRINI: Debbie Pellegrini. What it  
13 is, is the current regulations say the Chief of Board  
14 Proceedings allocates the time and has to notify  
15 everyone.

16 MS. MANDEL: This then restricts the Board to  
17 ever having any different kind of time, you know, or any  
18 different way of running the hearings. And the one  
19 thing that just occurred to me was that at some point,  
20 depending on how the hearings are run, you know that the  
21 original scheduling of hearings includes more than  
22 24 hours worth of hearings for any particular hearing  
23 date, and this ten minutes is -- you're going to have  
24 someone saying I didn't get my whole ten minutes,  
25 assuming they didn't get their whole ten minutes,

1 because we made -- some changes were made in the letter  
2 that goes to taxpayers to reflect all that kind of  
3 stuff, so I'm just wondering about how restrictive this  
4 potentially is.

5 MS. RUWART: Good comment. We'll look at that.

6 MS. PELLEGRINI: This is Debbie Pellegrini.  
7 I'm concerned about (d), because yesterday was the  
8 example where the Board needed a lot more than ten  
9 minutes for their questions. We had an hour hearing,  
10 which the Board was asking 30 minutes worth of questions  
11 to get to the . . .

12 MS. MANDEL: The Board should have flexibility  
13 to conduct the hearings --

14 MR. VINATIERI: Absolutely. Absolutely.

15 MS. MANDEL: -- in an appropriate manner for  
16 the particular case.

17 MR. VINATIERI: There needs to be some language  
18 in here that's more general, that says that this is the  
19 general rule of thumb, but that there's -- I mean, we  
20 used to have cases in the good ol' unitary days where  
21 they'd go for an hour to an hour and a half, because it  
22 was all factual. You had no choice.

23 MS. ARMENTA-ROBERTS: They're suggesting that  
24 you know ahead of time if you're going to be allowed  
25 that so you can prepare properly, the State Bar.

1           MR. VINATIERI: Yeah. Right. The other thing  
2 here -- and some of us are very serious about this -- on  
3 the prior chairwoman, when it said ten minutes and we're  
4 not getting ten minutes, and some of us were very  
5 serious about filing suit or something that we weren't  
6 getting our due process and not following the  
7 Board-sanctioned rules, albeit they weren't written out  
8 like this. So I think we do need to be very careful  
9 about saying this is the way it's going to be and have  
10 no flexibility.

11           MS. RUWART: Great. Flexibility. We will take  
12 that into account.

13           Is there any other significant comments on the  
14 timing? Good. 5022.1, Public Comment, (a), (b), or  
15 (c)? Article 6.

16           MS. MANDEL: I have a question. Are you --  
17 (a), public comment, a member of the public may not  
18 address individual cases on the consent agenda, so now  
19 we publish a consent agenda. The way we used to publish  
20 a consent agenda, of course, we didn't list all the  
21 names. Now we list all the names. And so it says, you  
22 know, my name under franchise and income tax matters  
23 consent. And so a member of the public, not that they  
24 would, you know, know what to say, but they couldn't  
25 come and say something about me or anything they might

1 want to say about me because my name appears on an  
2 agenda, because it's on a consent agenda. I mean, I  
3 understand that that's probably there because then it  
4 turns it into a report, but how can we prohibit in this  
5 regulation someone speaking about anything under  
6 Bagley-Keene?

7 MR. KAMP: I don't think you can prohibit a  
8 member of the public. What you could say is they could  
9 address the public in any item. However, a member of  
10 public's comment on a consent agenda item shall not have  
11 the effect of turning that into an adjudicatory item.

12 MS. MANDEL: And then that has to be somehow in  
13 the Kopp Act regs that we have, and I'm not sure that  
14 that wraps around into the -- but it might.

15 MS. PELLEGRINI: Debbie. Or we're going to  
16 have to turn this to say something in reference to the  
17 Kopp Act. If they wish to speak on this item, it  
18 actually needs to be pulled. But I think you're right.  
19 We have to let them speak. But I think at that point  
20 the item would be pulled from the decision.

21 MS. MANDEL: Pulled from the -- pulled from the  
22 consent agenda and comes back the next time.

23 MR. KAMP: Well, sure. But it seems  
24 somebody -- I could see why this is in there. Somebody  
25 could just offer to speak on something, and that

1 immediately takes something off the consent agenda.

2 MS. RUWART: Yeah. You could prevent XYZ Corp  
3 from getting their million dollar --

4 MR. SPERRING: One solution to that problem is,  
5 the Chair would control the agenda. The Chair could  
6 vote on the consent item first before allowing public  
7 discussion.

8 MS. PELLEGRINI: Can't do that.

9 MR. SPERRING: Why not?

10 MS. PELLEGRINI: The public comment must be  
11 given before the Board makes their decision. And that's  
12 part of the open meeting.

13 MS. MANDEL: Well, then, perhaps somebody needs  
14 to look at the Kopp Act stuff, because I know that the  
15 way our regs work, something comes off consent if a  
16 Board member or staff contacts the party or staff or if  
17 you have a discussion. But I've been, you know,  
18 previously told that if someone's just leaving me a  
19 voice mail on my phone and I never call them back and  
20 never talk to them about it, that that's not -- you  
21 know, that that's not going to make me have to  
22 necessarily pull it off consent. So if there's a way to  
23 do it, but I don't think we can preclude them from  
24 speaking.

25 MS. RUWART: We'll work on that section.

1 MS. ARMENTA-ROBERTS: Who would be the one to  
2 speak about it? Would we just see a name?

3 MS. RUWART: We can't -- you know, we can't  
4 predict.

5 MR. HELLER: Our whole issue is just to make  
6 sure that we didn't have -- that we didn't ruin an  
7 entire consent agenda by having someone come up and  
8 speak and then throw us into Kopp Act issues. So we'll  
9 look at trying to create a mechanism so that everyone  
10 can speak on any item on an agenda and there's a  
11 mechanism for putting it on the right part of the agenda  
12 so somebody can speak without any further ramifications.  
13 So we'll take a look at the Kopp Act and see what we can  
14 do there.

15 MS. RUWART: Okay. (b) and (c), any comments  
16 or questions? Article 6, voting decorum. I'm sorry.  
17 Am I going too fast, Marcy?

18 MS. MANDEL: No. I'm just -- it's just  
19 interesting to see public comment, item (b), that if we  
20 had a Board committee meeting in January where we did  
21 something and then the -- where we authorize some  
22 regulations into a public formal rule-making, and then  
23 we have the formal rule-making hearing, which is the  
24 only official part of the OAO record, and the item has  
25 not materially changed because it is now at public

1 hearing just as authorized out of the committee and  
2 approved by the Board when it approved the minutes, then  
3 the Board can say at the public hearing on the  
4 regulation we're not going to . . .

5 MR. HELLER: This would not apply to a hearing  
6 on any regulation whatsoever. And basically these  
7 provisions will only apply where there's an  
8 administrative review of an assessment or a claim for  
9 refund. So it would not apply in cases where we're  
10 promulgating a regulation. That's not the intention.  
11 These are hearing procedures, but they're tied through  
12 the jurisdiction that for -- what they apply to is tied  
13 through to the initiation of a request for review by a  
14 taxpayer, essentially.

15 MS. MANDEL: But this talks about items from  
16 Board --

17 MR. HELLER: The parts themselves are not so  
18 broad that they apply to every oral hearing conducted by  
19 the Board.

20 MS. MANDEL: This public comment -- you're  
21 saying this public comment provision only applies to  
22 actual case-type matters before the Board? When are you  
23 ever going to have public comment on the same item at a  
24 Board committee meeting? I don't even understand how  
25 that applies in the context of a --



1 MS. RUWART: Committee hearing cases.

2 MS. MANDEL: I'm confused.

3 MS. PELLEGRINI: This is something that's been  
4 worked out from the Open Meeting Act, that if you had an  
5 item before and you're bringing it back and it's not  
6 changed, that you don't have to hear the same public  
7 comment.

8 MS. RUWART: It looks like the problem is the  
9 word "committee." They must have taken it from  
10 somewhere else. We didn't mean Board committees. We  
11 didn't mean --

12 MS. MANDEL: Board committees are informal  
13 anyway.

14 MS. RUWART: Yeah.

15 MS. MANDEL: Can you please look at that?

16 MS. RUWART: No problem.

17 MS. MANDEL: Thank you. Please look at that.

18 MS. RUWART: (c), everything okay? All right.  
19 I am looking -- I just need to let you guys know I'm  
20 supposed to take someone to the airport at 5:15.

21 MR. VINATIERI: What time are we going to be  
22 done?

23 MS. MANDEL: We're almost done.

24 MR. VINATIERI: I'm going to make some noise on  
25 the rehearing stuff.

1 MS. RUWART: 5023, Quorum. Looks like the next  
2 couple of pages are pretty much existing. 5023(a), (b),  
3 (c), any issues?

4 MS. PELLEGRINI: This is Debbie. All of these  
5 sections here come from opinions that were written by  
6 Legal that were in that Board meeting reference. That  
7 is a document that you don't know about, Joe.

8 MR. VINATIERI: Public document?

9 MS. PELLEGRINI: It's our procedures that we  
10 have been using, and so it's making them formal.  
11 Actually, that document is going to be published on the  
12 Web.

13 MS. MANDEL: I mean, I don't particularly know  
14 what the thinking was behind some of this and whether  
15 all of this is even appropriate to be in regulation  
16 form, but that's a whole other issue. I really wonder  
17 about that.

18 MS. RUWART: Okay. If there's specifics, I'd  
19 be happy to take that into account. 5024 (a) or (b)?

20 MR. MICHAELS: (c).

21 MS. RUWART: Yeah. Sure.

22 MR. MICHAELS: Is a tie a decision?

23 MR. VINATIERI: No.

24 MS. MANDEL: State assessment matters, at the  
25 end of the year it is.

1 MR. VINATIERI: Right.

2 MS. RUWART: It's just that the Board-adopted  
3 value hasn't changed.

4 MR. VINATIERI: Right. For that program.

5 MS. RUWART: Because you have to make a motion  
6 to change the Board-adopted value, so isn't it a tie is  
7 no decision?

8 MR. MICHAELS: But you're entitled to a  
9 decision.

10 MS. RUWART: No. It's a decision to not change  
11 the Board-adopted value, I thought.

12 MS. MANDEL: Yeah. There's a legal opinion on  
13 that.

14 MS. RUWART: Yeah. There's an answer. We can  
15 give it to you.

16 MR. VINATIERI: Peter, you'd better get it in  
17 here.

18 MR. MICHAELS: I think the legal opinion is in  
19 response to something I wrote, so . . .

20 MS. RUWART: You don't need us to look it up  
21 then. Okay, (d), forms of motions, (1), submitted for  
22 decision; (2), additional documentation as to 30-30-30,  
23 essentially; (3), the adjustments; (4), the old Board of  
24 control; (5), the formal or memorandum opinion  
25 procedures.

1 MS. MANDEL: I think there are things that -- I  
2 mean, I haven't been through our Board Proceedings  
3 manual. There may be things that are missing. I do  
4 question about putting all this, how you vote it a rule.  
5 I do think that we have something that says that we're  
6 generally governed by Robert's Rules of Order. There  
7 doesn't appear to be any reflection of that to the  
8 extent that you make only these rules.

9 MS. RUWART: Okay. Good comment. Anything  
10 else?

11 MR. DAVIS: Actually -- Ken Davis -- back when  
12 we were doing the language on Bagley, the four pieces  
13 of -- the four statutes post the Rules of Order, the  
14 Rules of Order say you're not governed by Robert's Rules  
15 of Order. You're governed by the Board's rules. This  
16 is on 5020. You're incorporating some Rules of Order  
17 that were adopted in 1995 and then amended in 1996. And  
18 when I looked at those, it said you're governed by  
19 essentially a two- or three-page Rules of Order prepared  
20 during that time, and then there's a default provision  
21 to Robert's Rules of Order that existed at that time.  
22 You may want to look at that and update that.

23 MS. PELLEGRINI: Good point.

24 MS. RUWART: Thank you. Very good.

25 MR. VINATIERI: I had one concern -- this is

1 Joe -- and that is on those forms of motions. Part of  
2 the problem, to be candid, with all this is you're  
3 making everything very, very formal, very formalistic.  
4 I think we all understand that.

5 The problem with doing that, of course, is, if  
6 there ever is a different type of form of motion, you  
7 can't do it. In other words, something comes up, you  
8 can only do one, two, three, four or five. So I would  
9 strongly suggest that you have some exculpatory language  
10 that says blah, blah, blah to give you some flexibility.

11 MS. RUWART: Makes it flexible.

12 MR. VINATIERI: That's the problem with all  
13 these rules.

14 MR. HELLER: There's only so much flexibility  
15 you can put in a rule before it's no longer a rule.

16 MR. VINATIERI: Yeah, I know. I understand.

17 MS. RUWART: How are we doing? Subsection (e),  
18 reopening a vote. Great.

19 How about 5026, Notice of Board Decision,  
20 (a), the general procedures of notice of the decision.

21 MR. MICHAELS: Keep going.

22 MS. RUWART: (b), the finality of the decision.

23 MR. MICHAELS: Keep going.

24 MS. RUWART: (c), property tax decisions.

25 MR. VINATIERI: Stop.

1 MS. RUWART: Yes. Are there any comments on  
2 division (c) on 5026? Okay. How about (d)? Great.

3 5027, Petition for Rehearing.

4 (a)?

5 (b)? Okay.

6 5028, Decision on a Petition for Rehearing.

7 MR. VINATIERI: I have some --

8 MS. RUWART: Yes.

9 MR. VINATIERI: -- major issues with this.

10 MS. RUWART: With 5028?

11 MR. VINATIERI: Yes. I said here earlier I was  
12 going to have a problem.

13 I have had several sales tax cases where we had  
14 new information. I'm trying to remember, I can remember  
15 two specifically.

16 And it came back to the appeals division, which  
17 made a recommendation, gave it to the Board, and of  
18 course the taxpayer never had an opportunity to see what  
19 it was, because they took the position that it was an  
20 attorney client.

21 It's my view that -- I realize we're talking  
22 about some sacrosanct areas here, but if the appeals  
23 division's acting in a capacity where they're  
24 summarizing information and they're doing a D & R, for  
25 example, that when new information comes to them and

1 they're acting in that same kind of capacity, that the  
2 taxpayer should have the right to see that  
3 recommendation that comes back to the Board.

4 MS. RUWART: Okay. So you'll make a comment to  
5 that effect.

6 MR. VINATIERI: That's -- I will do that. And  
7 I have done that.

8 MS. RUWART: Great. Very good.

9 MR. VINATIERI: It's in here already.

10 MS. RUWART: Excellent.

11 Anything else, (a), (b), or (c)?

12 5029, Rehearings, themselves?

13 5030, just a mention of the next step after the  
14 Board of Equalization options and appeals have been  
15 exhausted.

16 MS. MANDEL: It's misleading.

17 MS. RUWART: Is it?

18 MS. MANDEL: I think it's misleading because we  
19 have had taxpayers who have not paid the tax and have  
20 not filed a recon claim and who have gone right after  
21 the Board of Equalization and filed a lawsuit and then  
22 they get their lawsuit dismissed because they have not  
23 exhausted their administrative remedies, etcetera,  
24 etcetera, etcetera, and they come and they complain and  
25 they file again. They think they did something wrong

1 with their lawsuit, so they file it again. And,  
2 granted, you know, not represented -- some represented  
3 taxpayers, but maybe they're not represented, we don't  
4 know, but unrepresented taxpayers, I think, it's a  
5 little bit misleading.

6 And my general comment on all this stuff that's  
7 coming out of the Board proceedings manual and sort of  
8 general things that don't really appear to me to be  
9 appropriate regulations, if the idea is that people out  
10 there in the world need to know more about how the  
11 process works at the Board of Equalization, which should  
12 be able to have the flexibility to handle the Board's  
13 business in the manner that the Board at any particular  
14 time feels is most appropriate, then perhaps what is  
15 needed is more like, you know, we wrote a whole  
16 assessment appeals manual for how things normally would  
17 go at an assessment appeals Board hearing.

18 Maybe you need a little -- we did years ago a  
19 manual for how things are going to work at a Property  
20 Tax Committee, for the Property Tax Committee, a  
21 separate manual for the Business Act Committee to follow  
22 in terms of getting the issues up before the Board, and  
23 maybe that type of manual that can go out, like, you  
24 know, your rights and appeals as a taxpayer, we have  
25 that little brief thing, rather than hamstring the Board



1 practice and procedures by making it a regulation, of,  
2 you know, I have to stand on my head and clap my hands  
3 three times before I make a motion.

4 MS. PELLEGRINI: This is Debbie.

5 We are -- based on Board member requests, there  
6 is going to be a new Board meeting reference that  
7 actually Diane's been working on, and it's in --

8 MS. OLSON: Mr. Christian's office hopefully.

9 MS. PELLEGRINI: Yes, and it will be put on the  
10 web so that it will be available so that might be  
11 something for consideration.

12 MS. MANDEL: And even, you know, the IRS,  
13 probably FTB does too, I'm thinking of those, you know,  
14 those pamphlets that go out to taxpayers that tell them  
15 what the process is and how it's going to work.

16 MR. VINATIERI: I think what Marcy is saying,  
17 and I have the same concern, that on some of this  
18 procedural stuff maybe we don't want to put it in here  
19 and make it a regulation.

20 Let's leave it in a manual so that we have the  
21 flexibility. As long as taxpayers and everybody has it  
22 out there, it's okay.

23 I think maybe this might be a little bit over  
24 the top.

25 MS. RUWART: That's fine. Just let us know

1 what parts you think particularly --

2 MR. VINATIERI: Well, just this last stuff.

3 MS. RUWART: This last bit, all right.

4 MR. HELLER: You know that the value -- this is  
5 just a response, but, I mean, the value of the document  
6 as a whole gets decreased each time something that's  
7 valuable to a person trying to figure out the entire  
8 process goes somewhere else, and we're now saying, now,  
9 go find this document, and that document will reference  
10 something else and not this.

11 And I'm not suggesting that these aren't  
12 necessary things to you, and if they are, we will do  
13 them, but, I mean, our goal was to try to get people  
14 more of a one-stop place to go for all this information.

15 MS. RUWART: I am going to say, any comments  
16 for Sections 5031 and 5032?

17 We welcome your written comments. I want a  
18 thank you all. Do you have any other comments?

19 MR. VINATIERI: Yes, I do.

20 I heard Betty talk about the compressed time  
21 deadlines. I would encourage the staff, in light of  
22 what Betty said, and perhaps the deputy State  
23 controller, that we have done substantively over six  
24 hours' worth of work today. There is a whole bunch of  
25 stuff that has to be done. To have it done by

1 December 23rd, and then other work done by mid January,  
2 I don't think is realistic. And I would strongly  
3 encourage staff to put it over 30 to 60 days.

4 MS. RUWART: You would strongly encourage  
5 public comment to that effect.

6 MR. VINATIERI: Yes, that's fine.

7 MS. RUWART: Thank you. The hearing is closed.

8 (The proceedings were concluded at 5:04 p.m.)

9 ---o0o---

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 REPORTER'S CERTIFICATE

2 State of California )  
3 ) ss  
4 County of Sacramento )

5 I, CAROLE W. BROWNE, Certified Shorthand  
6 Reporter in the State of California, certify that on  
7 December 14, 2005 I recorded verbatim, in shorthand, to  
8 the best of my ability, the proceedings in the  
9 above-entitled hearing; that I transcribed the shorthand  
10 writing into typewriting; and that the preceding pages  
11 constitute a complete and accurate transcription of the  
12 shorthand writing.

13  
14 Dated: December 29, 2005

15  
16 Carole W. Browne, CSR  
17 Certificate No. 7351

18 ---o0o---

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

REPORTER'S CERTIFICATE

State of California       )  
                                  )    ss  
County of Sacramento       )

I, LAURIE GOWER, Certified Shorthand Reporter  
in the State of California, certify that on December 14,  
2005 I recorded verbatim, in shorthand, to the best of  
my ability, the proceedings in the above-entitled  
hearing; that I transcribed the shorthand writing into  
typewriting; and that the preceding pages constitute a  
complete and accurate transcription of the shorthand  
writing.

Dated: December 29, 2005

\_\_\_\_\_  
Laurie Gower, CSR  
Certificate No. 8000  
  
---o0o---